

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

SPIRIT MONKEY, LLC.,	§	
Plaintiff,	§	Civil Action No: 5:17-cv-458-DAE
v.	§	
	§	
POSITIVE PROMOTIONS, INC.	§	
Defendant.	§	

STIPULATION AND ORDER

WHEREAS, Spirit Monkey, LLC, ("Spirit Monkey") filed the above-captioned action contending that U.S. Patent No. 9,196,174 (the "'174 Patent") is valid, and infringed, and for claims of Federal False Designation of Origin or Source, Common Law Unfair Competition, Common Law Palming Off and Texas State Dilution (collectively referred to as "CLAIMS") Spirit Monkey and Positive Promotions, Inc. ("Positive Promotions") may be individually referred to as a "Party" or collectively referred to as the "Parties";

WHEREAS, Positive Promotions has not answered or otherwise moved in response to the Complaint [Doc. 1];

WHEREAS, Positive Promotions has agreed to cease making, using and selling products accused of infringement in the above-captioned action; and

WHEREAS, the parties want to eliminate the uncertainties and cost of litigation by fully, finally and amicably resolving the above-captioned action.

IT IS HEREBY STIPULATED AND AGREED by and between counsel for the Parties, subject to the approval of the Court, as follows.

1. This Court has jurisdiction over the subject matter of this action.
2. U.S. Patent No. 9,196,174 is valid.

3. U.S. Patent No. 9,196,174 is infringed by the accused "Positive Patch" products that are the subject of the Complaint filed herein, including the type of items shown in paragraphs 54-55 of the Complaint ("Accused Products").

4. Positive Promotions will cease and desist and is enjoined from making, using and selling the Accused Products or embroidered fabric products covered by the claims of U.S. Patent 9,196,174, and from any unauthorized use of Spirit Monkey's "SPIRIT STICKS" trademark, directly or indirectly, and the alleged violations of the CLAIMS subject to the following exception.

5. Positive Promotions may sell its existing inventory of Accused Products consisting of 2,049 packets at Positive Promotions' ordinary and customary pricing for discontinued merchandise by October 1, 2017, without any use of the "SPIRIT STICKS" trademark.

6. Positive Promotions will destroy any inventory of Accused Products remaining after October 1, 2017.

7. In consideration of the foregoing, Spirit Monkey covenants not to sue Positive Promotions, its successors, assigns, agents, officers, directors, subsidiaries, affiliates, employees, and attorneys for the CLAIMS and any and all actions, claims, causes of action, demands, expenses or damages, whether asserted or unasserted, known or unknown, of whatever kind, nature and/or description which accrued prior to the date of this Stipulation and Order.

8. The Clerk is instructed to close this action.

9. Each party shall bear its own costs and fees.

10. The Parties waive any right of appeal from this Order.

11. The Court retains jurisdiction over the Parties to enforce the terms of this Order on motion of either Party.

IT IS SO ORDERED.

Signed this 15th day of September, 2017.

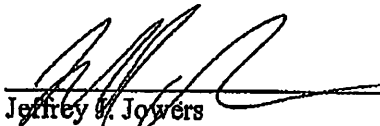


DAVID A. EZRA
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:



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